



Indiana Department of Environmental Management Office of Legal Counsel

Rule Fact Sheet
November 18, 2010

DEVELOPMENT OF NEW RULES AND AMENDMENTS TO 328 IAC 1 CONCERNING THE UNDERGROUND STORAGE TANK EXCESS LIABILITY TRUST FUND CHANGE RULE #08-684(FAB)

Overview

The Indiana Financial Assurance Board (FAB) has preliminarily adopted proposed rule language for new rules and amendments to rules at 328 IAC 1 concerning the underground storage tank excess liability trust fund (ELTF).

Citations Affected

328 IAC 1.

Affected Persons

Owners and Operators of Underground Storage Tank (UST) Systems.

Reason(s) for the Rule

As it has been six years since Title 328 was amended, the Indiana Department of Environmental Management (IDEM) has determined that UST system owners and operators would benefit from an adjustment for investigation and remediation costs reimbursable from the ELTF. This proposed amendment also allows for the annual adjustment of labor rates. It proposes the addition and modification of several definitions to clarify the rule. There are other proposed changes that will expedite payment from the fund.

Economic Impact of the Rule

There is no fiscal impact associated with this rulemaking. This rulemaking does not impose any additional requirements but clarifies and makes consistent existing language that allows for payment from the excess liability trust fund for the remediation of "fund qualifying occurrences" to owners and operators of underground storage tank systems.

Benefits of the Rule

This rulemaking will make 328 IAC 1 as consistent as feasible with the standards in 329 IAC 9, underground storage tank rules. This rulemaking will clarify requirements to make application for payment and adjust the cost allowance to 2010 figures.

Description of the Rulemaking Project

The ELTF was established under IC 13-23-7 to provide financial responsibility and a source of corrective action funds for owners and operators of USTs. In addition to the reimbursable cost adjustments, the proposed rule would also amend certain definitions including "substantial compliance" as it relates to the ELTF and define a "fund qualifying occurrence". It would clarify and amend actions and activities for which reimbursement may be sought from the fund. It would establish time limits for the submission of claims once a site has achieved a no further action (NFA) status and further define "UST system" and UST "closure" as it relates to the ELTF. Finally, this proposed rule clarifies and amends personnel classification activity descriptions and tasks and rates for which attorneys may seek reimbursement.

Scheduled Hearings

First Public Hearing: September 9, 2010, 1:30 p.m.,

Indiana Government Center South, Conference Center Rooms 1 and 2.

Second Public Hearing: November 18, 2010, 1:30 p.m.,
Indiana Government Center South, Conference Center Room C.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
(A) human, plant, animal, or aquatic life; or
(B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

There are no federal requirements.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published that contains the comments and the departments responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Financial Assurance Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule must be approved by the Attorney General and the Governor. When approved, the rule becomes effective 30 days after filing with the Indiana Register.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Lynn West, Rules Development Branch, Office of Legal Counsel, (317) 232-3593 or (800) 451-6027 (in Indiana).